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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,279	03/01/2004	David Dino	EL-8182	9542

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EXAMINER

TUCKER, PHILIP C

ART UNIT PAPER NUMBER

1712

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/790,279

Applicant(s)

DINO, DAVID

Examiner

Philip C. Tucker

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-13 and 15-31 is/are rejected.
7) ☒ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5, 7, 9-13 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Lenaerts (6607748).

Lenaerts teaches a crosslinked high amylose starch containing 70% amylose, which is used to form a tablet. The tablet may contain various biopolymers, including xanthan and celluloses, and clays (column 12, line 36- column 13, line 6). Example 7 teaches the dissolution of a tablet of Table 1 in an aqueous medium, specifically exemplifying xanthan. Applicant's intended use as a drilling fluid does not distinguish over the prior art. Applicant's method of making, such as in claims 5 and 13 does not distinguish over the prior art (In re Thorpe 227 USPQ 964).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10, 12, 13 and 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 02/12414 in view of Chesser (6933262).

WO 02/12414 teaches a drilling fluid which comprises a high amylase starch. Starch is a biopolymer and thus satisfies the requirements of the claim. WO '414 teaches that such starch may comprise "at least 30%", and teaches corn which comprises about 70%, which would render the "at least 50%" and "at least 70%" of the present invention obvious to one of ordinary skill in the art (column 3, lines 8-21). WO teaches that the starch may be crosslinked (see claim 6). WO '414 further teaches that the starch may be stabilized by means known in the art, including chemical modification (page 5, lines 20-25 and column 4, lines 12-16). WO '414 differs from the present invention in that the use of carboxymethyl or hydroxypropyl groups as substituents is not disclosed. Chesser teaches that starches may be substituted (derivatized) with carboxymethyl or hydroxypropyl groups, which renders them inherently nonfermentable (column 3, lines 13-34). It would be obvious to one of ordinary skill in the art to further stabilize the starches of WO '414 by carboxymethyl or hydroxypropyl substitution, given the teaching of Chesser that such stabilizes the starch to fermentation, and in view of the teaching of WO '414 that the starches may be stabilized by known means in the art. Applicant's method of making, such as in claims 5 and 13 does not distinguish over the prior art (In re Thorpe 227 USPQ 964).

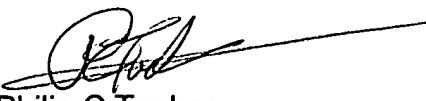
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3. Applicants amendment has been noted. Further consideration of the term "biopolymer" is made in the current office action. It is noted that starch, cellulose and other polymers are considered "biopolymers" (see US 2004/0241382 paragraph 0022), and as such the rejection over WO '414 in view of Chesser is maintained. A new rejection is presented herein.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C. Tucker whose telephone number is 571-272-1095. The examiner can normally be reached on Monday - Friday, Flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Philip C Tucker
Primary Examiner
Art Unit 1712